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JOHN F. DAVIS, CL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 664 Misc.

CITY OF SCRANTON and MILTON J. SHAPP, *Petitioners,*

v.

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA and UNITED STATES OF AMERICA, ET AL., *Respondents.*

PETITION FOR WRIT OF MANDAMUS OR CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA. AND MOTION FOR LEAVE TO FILE. AND MOTION TO INCLUDE RECORD IN NO. 433 CITY OF POTTSVILLE V. UNITED STATES

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MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS OR CERTIORARI

Now come petitioners City of Scranton, a municipality located in Lackawanna County, Pennsylvania, and Milton J. Shapp, a citizen of the Commonwealth of Pennsylvania and a Pennsylvania Railroad Company stockholder with offices in Philadelphia, and respectfully move this Court for leave to file the annexed petition for writ of mandamus or certiorari under Section 1651 of Title 28, United States Code, directed to the District Court of the United States for the Middle District of Pennsylvania, directing the Honorable Francis L. Van Dusen, C. J., Michael H. Sheridan

and William J. Nealon, D.JJ., to show cause why a writ of mandamus should not be issued against them in accordance with the prayer of said petition, or in the alternative that this Court review the orders of the United States District Court for the Middle District of Pennsylvania entered July 11, 1967, July 28, 1967 and August 30, 1967 in No. 10054-Civil, *Borough of Moosic* v. *United States,* and for such other and further relief as may be just and proper.

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UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA and UNITED STATES OF AMERICA, ET AL., *Respondents.*

MOTION TO INCLUDE RECORD IN NO. 433 CITY OF POTTSVILLE V. UNITED STATES

Now come petitioners City of Scranton and Milton J. Shapp, and respectfully move this Court that the record of the United States District Court for the Middle District of Pennsylvania heretofore submitted with the appeal in No. 433, *City of Pottsville* v. *United*

States, be included by reference in their petition for writ of mandamus or certiorari.

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UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA and UNITED STATES OF AMERICA, ET AL., *Respondents.*

PETITION FOR WRIT OF MANDAMUS OR CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA, AND THE HONORABLE FRANCIS L. VAN DUSEN, MICHAEL H. SHERIDAN, AND WILLIAM J. NEALON, JUDGES FOR THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

City of Scranton, a municipality located in Lackawanna County, Pennsylvania, and Milton J. Shapp, a citizen of the Commonwealth of Pennsylvania and a Pennsylvania Railroad Company stockholder with offices in Philadelphia, pray that a writ of mandamus or certiorari issue to review the action of the United States District Court for the Middle District of Pennsylvania in staying all proceedings in No.

10054-Civil, *Borough of Moosic, et al.* v. *United States, et al.*, a single action which seeks to set aside orders of the Interstate Commerce Commission (I.C.C.) approving and authorizing the merger of The Pennsylvania Railroad Company (PRR) and The New York Central Railroad Company (NYC) and the inclusion of Erie-Lackawanna Railroad Company (E-L), The Delaware and Hudson Railroad Corporation (D&H) and Boston and Maine Corporation (B&M) into the Norfolk and Western Railway Company (N&W), and that the Supreme Court of the United States direct the said United States District Court for the Middle District of Pennsylvania to proceed forthwith to hear and to determine the said complaint of Borough of Moosic and intervening complaints of City of Scranton and Milton J. Shapp. City of Scranton and Milton J. Shapp made separate applications for intervention on June 27, 1967, which were granted by the District Court on July 11, 1967.

OPINIONS BELOW

The order of the District Court granting the motion of the United States and intervening defendants for a stay of further proceedings was entered July 11, 1967 and is reproduced in Appendix A of *No.*——, Misc., *Borough of Moosic* v. *United States District Court for the Middle District of Pennsylvania.*

The per curiam Memorandum Sur Motions of Defendant and Intervening Defendants for a Stay was entered July 13, 1967, and is reproduced in Appendix B of No. ——, Misc., *Borough of Moosic* v. *United States District Court for the Middle District of Pennsylvania.*

The order of the District Court denying Motion to Vacate Stay was entered July 28, 1967 and is repro-

duced in Appendix C of No. ——, Misc., *Borough of Moosic* v. *United States District Court for the Middle District of Pennsylvania.*

The further order of the District Court denying Motion to Vacate Stay of Proceedings and Establish A Briefing Schedule was entered August 30, 1967 and is reproduced in Appendix D of No. —— Misc., *Borough of Moosic* v. *United States District Court for the Middle District of Pennsylvania.*

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1651(a). Exclusive appellate jurisdiction is conferred upon this Court by 28 U.S.C. Section 2325 and Section 1253 of actions to enjoin orders of the I.C.C., and this writ is sought in aid of such exclusive appellate jurisdiction.

QUESTIONS PRESENTED

1. Where two I.C.C. orders are admittedly intertwined and are attacked in a District Court on the basis of the interrelationship of the orders as affecting the public interest, should not this Court order a vacation of a stay of proceeding which has been directed by that District Court because of the pendency of proceedings in other district courts in which the orders are being attacked separately by other persons?

2. Where intervenors join in an attack upon two I.C.C. orders, is it not the clear duty of a District Court to hear their case and should not this Court enforce that duty notwithstanding the District Court's refusal to hear the case because of an appearance of the intervenors in another court with respect to an earlier I.C.C. order which was reversed by this Court?

STATUTES INVOLVED

The statutory provisions involved are 28 U.S.C. Section 1398, 28 U.S.C. 1651(a), 28 U.S.C. 2325 and 28 U.S.C. 1253, and are reproduced in Appendix E of No. —— Misc., *Borough of Moosic* v. *United States District Court for the Middle District of Pennsylvania.*

STATEMENT

City of Scranton and Milton J. Shapp oppose *PRR-NYC*[1] merger and *N&W Inclusion*[2] orders of the Interstate Commerce Commission which were issued separately and simultaneously on June 12, 1967. They were parties to both proceedings before the agency, and were intervenors in the previous action commenced September, 1966 in the Southern District of New York, *Erie-Lackawanna R. Co.* v. *United States,* 259 F. Supp. 964. This petition for a writ of mandamus or certiorari is submitted separately from that of Moosic, Pa., since the prior participation of Scranton and Shapp in the former New York proceeding appears to have been given some weight by the Middle District of Pennsylvania in its stay of Moosic's proceeding, and because Scranton and Shapp desire to inform this Court as to their separate reasons for asserting, pursuant to Rule 30, why relief is not available in any court.

Proceedings Following Mandate in B. & O. R. Co v. United States

The March 27, 1967 opinion and order of this Court in *B. & O. R. Co.* v. *United States,* 386 U.S. 372, were followed by an April 28, 1967 order by the Southern District of New York, as follows:

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[1] Finance Docket No. 21989-90, *Pennsylvania R. Co.-Merger-New York Central R. Co.,* 330 I.C.C. 328.

[2] Finance Docket No. 21510, *Norfolk & W. Ry. Co. and New York, C. & St. L. R. Co. Merger,* 330 I.C.C. 780.

IT IS ORDERED that:

1. The order of this court entered on October 4, 1966, denying a temporary injunction is vacated;

2. The cause is remanded to the Interstate Commerce Commission for further proceedings not inconsistent with the Supreme Court's opinion of March 27, 1967;

3. The orders of the Interstate Commerce Commission entered on April 6 and September 19, 1966, in Finance Docket No. 21989 and 21990, insofar as they authorize the immediate consummation of the proposed merger between the Pennsylvania Railroad Company and the New York Central Railroad Company, are enjoined pending the completion of the proceedings directed by the Supreme Court.

Pursuant to a conference held June 16, 1967 in chambers attended by the railroad parties, U.S. and I.C.C.,[3] hearing was set for June 28, 1967 on motions (1) by N&W to amend the order on mandate from the Supreme Court so as to embrace the June 12, 1967 order of the I.C.C. in *PRR-NYC* and (2) by PRR and NYC to require that Scranton and Shapp file supplemental complaints against the *PRR-NYC* merger order or suffer dismissal with prejudice.

Scranton and Shapp did not join in the request of N&W and other railroad parties seeking further injunctive relief against *PRR-NYC* by amendment of the order on mandate or otherwise.[4] Prior thereto

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[3] City of Scranton and Shapp were not invited to this conference with the three New York judges.

[4] The principal authority for this motion by N&W was *Helene Curtis Industries* v. *Sales Affiliates,* 247 F. 2d 940 (2d Cir. 1957).

they had applied to the Middle District of Pennsylvania to participate in Moosic's request for injunctive relief, and were of the opinion that the old suit in the Southern District of New York was completed when the Supreme Court remanded the action to the District Court with instructions that the cause be remanded to the I.C.C. for further proceedings.[5]

At the June 28, 1967 hearing in New York, Scranton and Shapp opposed the PRR and NYC show cause order that they be required to file new complaints in New York attacking the *PRR-NYC* merger.

The July 3, 1967 memorandum order of the Southern District of New York amended the April 28, 1967 order on mandate as follows:

> "3. The orders of the Interstate Commerce Commission entered on April 6 and September 19, 1966, and served June 12, 1967, insofar as they authorize immediate consummation of the merger between the Pennsylvania Railroad Company and the New York Central Railroad Company are enjoined pending the final determination of these actions by this Court and thereafter for such further time, if any, and to such extent and on such terms as this Court may then direct. The period of 180 days fixed by the Commission in its order served June 12, 1967 for exercising the authority there conferred shall not begin to run so long as such injunction remains in effect."

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[5] Although *B. & O. R. Co.* v. *United States, supra,* reached the Court on an interlocutory injunction, the Court held that the Southern District of New York had sustained the I.C.C.'s order authorizing the *PRR-NYC merger,* 385 U.S. 914. The error corrected in *B. & O. R. Co., supra,* related to the I.C.C. rather than to an abuse of discretion by the District Court in denying an interlocutory injunction. Cf. *Sierra Pac. Power Co.* v. *F.P.C.,* 223 F. 2d 605, 609 (D.C. Cir. 1955), aff'd, *F.P.C.* v. *Sierra Pacific Power Co.,* 350 U.S. 348, 355 (1956). *Pacific Gas & Elec. Co.* v. *F.P.C.,* 272 F. 2d 510 (D.C. Cir. 1958).

The Southern District of New York proceeded on the theory that all the Supreme Court had before it on appeal were motions for interlocutory relief pending the reconsideration the I.C.C. had already granted. In particular, the New York court noted that if the actions remained pending for the amendment of the order on mandate of the Supreme Court, sought by N&W and its allies, then the actions were pending for other purposes as well. The New York court thereupon ordered that Scranton and Shapp file supplemental complaints in *PRR-NYC* on July 17, 1967 or show cause September 18, 1967 why they should not be dismissed with prejudice. (Moosic Mandamus, App. F)

The July 3, 1967 memorandum order of the New York court contemplated that *N&W Inclusion* would not be reviewed in that court. The same memorandum order acknowledged that Scranton and Shapp were intervenors to Moosic's action attacking *PRR-NYC* and *N&W Inclusion* jointly in a single proceeding.

Commencement of Pennsylvania Proceedings

Moosic commenced its consolidated action June 26, 1967. Prior thereto the U.S. and I.C.C. had expressed no objection to having *PRR-NYC* heard in New York and *N&W Inclusion* heard in Virginia. N&W had filed its complaint against the *N&W Inclusion* order June 13, 1967 in the Western District of Virginia. The U.S. and I.C.C. had attended the June 16, 1967 conference in New York with the three judges, filed memoranda June 27, 1967 with the New York court, and at no time did these governmental agencies take action for consolidated consideration of *PRR-NYC* and *N&W Inclusion.*

When E-L brought a complaint against *N&W Inclusion* in the New York court[6] seeking to enforce the I.C.C. order, and made a motion to consolidate *N&W Inclusion* with *PRR-NYC,* E-L was strongly opposed by both PRR-NYC and N&W, the PRR-NYC memorandum stating:

> "The separate report and order in the inclusion case was issued after a separate proceeding upon its own record. The lawfulness of that order must be tested by that report and record. The lawfulness of the orders in the Penn-Central merger case are to be tested by the reports and the record made in Finance Docket 21989 and 21990. Consolidation would not appear likely to save the Court or counsel time or effort in the disposition of those issues, since each must be judged upon its own report and record, and we believe that such consolidation would tend to confuse and delay, rather than clarify and speed, these cases.
>
> "Expedition in the disposition of these cases is imperative and can be accomplished without further delay if the separate cases both move expeditiously to an early determination." (Memorandum of The Pennsylvania Railroad Company and The New York Central Railroad Company in Opposition to the Motion of Erie-Lackawanna Railroad Company for Consolidation, June 27, 1967)

The Moosic action radically changed the position of the other parties. The U.S. and I.C.C. on July 5, 1967 moved the Middle District of Pennsylvania for a stay of further proceedings on the ground that *PRR-NYC* and *N&W Inclusion* were "wholly inter-

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[6] *Erie-Lackawanna Railroad Co.* v. *United States and Norfolk and Western Railway Co.* (U.S.D.C.-SDNY, 67 Civ. 2362). This action was not progressed.

twined" since June, 1964, that the two I.C.C. proceedings were "wholly interrelated" and "completely intertwined", so that all litigation should be now concentrated in New York.[7] PRR and NYC also changed its position somewhat and informed the Pennsylvania Court:

> JUDGE SHERIDAN: I want to ask you one question. In view of what the Supreme Court said, can the New York Court consider the Penn-Central merger without having before it the inclusion case, because the Court said that it is necessary as to the future of the protected railroads and their inclusion, and so forth, be decided prior to the merger?
>
> MR. COUSINS: Your Honor, there's very strong reason to think that that's got to be done.
>
> JUDGE SHERIDAN: I would think it would have to be.
>
> MR. COUSINS: Of course, the N&W has taken quite a different position, but the Supreme Court has put the cases together and they ought to be—many of us here think they ought to be in New York.
>
> (Philadelphia Hearing, Tr. 85)

The Middle District of Pennsylvania on July 11, 1967 granted the motions of U.S., I.C.C., PRR and NYC for a stay of further proceedings. (Moosic Mandamus, App. A and B)

The New York Injunction Motion

Although the Pennsylvania proceedings were stayed, the U.S. and I.C.C. on July 20, 1967 moved in the New York court that Scranton and Shapp be enjoined

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[7] Joint I.C.C.-U.S. Memorandum in Support of Motion to Stay Further Proceedings, pp. 12-13.

from taking any further action in the Middle District of Pennsylvania. At the same time these governmental agencies also moved that N&W be joined as an involuntary plaintiff to the *N&W Inclusion* instituted by D&H in New York,[8] and that a separate pleading, briefing and argument schedule be set for *N&W Inclusion* in New York. That is, the U.S. and I.C.C., although seeking to enjoin Scranton and Shapp in New York on the theory that *PRR-NYC* and *N&W Inclusion* were "inextricably intertwined", "wholly interrelated" and "completely intertwined", did not desire to have *N&W Inclusion* consolidated for judicial review with *PRR-NYC,* and did not seek to join Scranton and Shapp as involuntary plaintiffs to the D&H's *N&W Inclusion* action.[9]

N&W complained to the New York court:

> "Looking back at the hearing before this Court on June 28th, considering that if we had known then that the two courts, Virginia and this court, would each be reviewing a separate order and on separate records, that the Commission refused to consolidate, and that they both be heard on expedited schedule, can anybody that was in that room before this Court on June 28th have believed that we would be here arguing today about Rule 19(a) and injunctions?
>
> "I undertook to go to Greenbriar, to go to Virginia, to go anywhere to get the kind of expedited

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[8] *Delaware and Hudson and Boston and Maine* v. *United States* (U.S.D.C.-SDNY, 67 Civ. 2451). The further report of the I.C.C. in F.D. 21510, issued September 1, 1967, has apparently mooted the D&H complaint.

[9] The Memorandum for the United States in *B. & O. R. Co.* v. *United States,* filed with the Supreme Court November 30, 1966, urged consolidation. (Memo, p. 32)

schedule the government seemed so anxious to achieve. I don't recall the United States or the Commission saying to me at that time, 'Go ahead and get your schedule. Even if you get it, we will come up here and enjoin you from proceeding in Virginia.'

"How did we get into this situation? What has happened to cause this flurry of injunctions, this flurry of stay orders?

"I think it is apparent that the Moosic case is what triggered all this.

* * * * * *

"The Middle District has stayed the Moosic case. We are just here on the momentum of all these stays and injunctions that got filed as a result of the Moosic case.

"The Moosic case is in the hands of the Middle District of (Pennsylvania) and was stayed in favor of the earlier two actions. That problem is behind us."

(New York hearing, July 25, 1967, argument of Counsel Trienens, Tr. 36-37)

The New York court on July 26, 1967 denied the motion of Scranton and Shapp to withdraw from the proceeding, denied the U.S.-I.C.C. request for an injunction against Scranton, Shapp and N&W, and joined N&W as an involuntary plaintiff to the D&H action against *N&W Inclusion* with separate pleading briefing and argument schedule apart from *PRR-NYC*. In its memorandum orders, the New York court considered *PRR-NYC* separate from *N&W Inclusion,* and stated that it entertained no doubt of the power and propriety of enjoining Scranton and Shapp insofar as it related to *PRR-NYC,* but that *N&W Inclusion* was a closer question. As in its memorandum

order of July 3, 1967, the New York court again stated it would first pass upon the validity of the *PRR-NYC* order, and that the subsequent determination of the *N&W Inclusion* order would bear upon the timing of the consummation of *PRR-NYC*.

Scranton and Shapp stated to the New York court at the July 25, 1967 hearing that the public interest issues in *PRR-NYC* and *N&W Inclusion* must be heard together. Judge Friendly stated that petitions for reconsideration were pending in *N&W Inclusion* which could not be ignored in a briefing schedule for that case, and that the court was sticking to its schedule in *PRR-NYC*.

Scranton and Shapp filed formal objections to the New York court's requirement that they file supplemental complaints in *PRR-NYC* on or before August 2, 1967.[10]

The Second and Third Pennsylvania Stay Orders

The Middle District of Pennsylvania on July 28, 1967 declined to vacate its stay, relying in large part upon the July 26, 1967 orders of the New York Court. (Moosic Mandamus, App. C) A further motion to vacate the stay was denied by the Middle District of Pennsylvania on August 30, 1967. (Moosic Mandamus, App. D). This motion had been made so that the Middle District of Pennsylvania could review the briefs filed in the New York Court by the railroad parties, as contemplated by the July 13, 1967 stay order.

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[10] The report on reconsideration in *N&W Inclusion* was released on August 14, 1967. *PRR-NYC* order on reconsideration was issued on September 11, 1967.

REASONS FOR GRANTING THE WRIT

1. Unavailability of Relief

Since the *PRR-NYC* and *N&W Inclusion* orders are conceded by the U.S. and I.C.C. to be "wholly intertwined", it follows that it is prejudicial to Scranton and to Shapp, as well as other communities in Pennsylvania, the only parties attacking the fundamental validity of both orders in any court, to have their single cause of action split into two components by participating in the New York proceeding. For example, City of Scranton is not served directly by PRR or NYC, but it is so served by E-L, D&H and CNJ. The adverse impact of losing the competitive services of E-L and D&H by both lines coming under common control by N&W, and the coordination of facilities eventually planned for the Scranton-Wilkes Barre-Binghamton area, were not considered by the agency in *PRR-NYC*. Yet *N&W Inclusion* is a transaction required by *PRR-NYC* to save E-L and D&H from complete destruction. One of the difficulties in seeking to set aside the order in *PRR-NYC* for failure to consider certain matters is a showing that such omitted considerations are truly significant. Since the premise for *N&W Inclusion* is that E-L, D&H and B&M will be destroyed by *PRR-NYC,* the injury to the Scranton area might be outweighed by the greater peril from a *PRR-NYC* merger. Accordingly, Scranton might well fail to set aside *N&W Inclusion,* standing alone, but if the record in *N&W Inclusion* is considered along with *PRR-NYC,* simultaneously, a reviewing court might well conclude that the I.C.C. erred in approving *PRR-NYC* without further hear-

ings in either or both cases or in failing to consolidate the two proceedings.[11]

On the other hand, N&W maintained strongly before the Middle District of Pennsylvania, Virginia and New York courts, that its obligation to acquire E-L, D&H and B&M must not be enmeshed with judicial review of *PRR-NYC*. Thus, faced with the conflict between Scranton, Shapp and two other communities raising public interest grounds that necessitate consolidated judicial review, on the one hand, and the contention of N&W that it must have a separate proceeding for judicial review of *N&W Inclusion*, on the other hand, the U.S. and I.C.C. have opted for separate proceedings. Further, the release on August 14, 1967 by the I.C.C. of its report on reconsideration in *N&W Inclusion*, 12 days after the August 2, 1967 deadline established by the new York court for supplemental complaints in *PRR-NYC*, effectively precluded consolidated consideration of both matters in that forum.

Relief is also unavailable by the normal appellate process of 28 U.S.C. 1253. The orders of the Middle District of Pennsylvania are not final and likewise do not constitute denial of an interlocutory injunction so long as *PRR-NYC* is enjoined by the Southern District of New York and *N&W Inclusion* is voluntary postponed by the I.C.C. pending judicial review. Mandamus would seem the appropriate remedy to com-

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[11] Indeed, the recent admission of the I.C.C. in both the Middle District of Pennsylvania and Southern District of New York that *PRR-NYC* and *N&W Inclusion* are "completely intertwined", "wholly interrelated" and "inextricably intertwined", strongly suggests that both matters be summarily remanded to the agency for further proceedings and for consolidation. (See opinions of Brennan, J. and Douglas, J. in *B. & O. R. Co.* v. *United States.*)

pel action. *McClellan* v. *Garland,* 217 U.S. 268, 280 (1910); *Ex Parte Bransford,* 310 U.S. 354, 355 (1940); *Stratton* v. *St. Louis S.W.R. Co.,* 282 U.S. 10, 16 (1930)

2. Lack of Prejudice to Any Party

The Middle District of Pennsylvania abused its discretion in staying all proceedings because the resolution of the issues under litigation in New York and in Virginia will not assist materially the disposition of the issues raised in the Middle District of Pennsylvania. Nor will any party be prejudiced by the threat of inconsistent decisions. The majority opinion in *B. & O. R. Co.* v. *United States,* stated at 381:

> "None of the appellant railroads challenge the merits of the merger; however, appellants Milton J. Shapp and the City of Scranton both attack the merger on its merits.

And at page 385:

> "The appellant railroads take varying positions all short of attacking the merits of the merger."

3. The Mandate in B. & O. R. Co v. United States

The Commission reimposed the controversial "Appendix G" interim conditions in its report served June 12, 1967 in *PRR-NYC.* 330 I.C.C. 328. It is unlikely that there would have been any splitting of *PRR-NYC* and *N&W Inclusion* for judicial review purposes had the I.C.C. not again provided for an interval between consummation of *PRR-NYC* and ultimate determination of the fate of E-L, D&H and B&M. The majority opinion in *B. & O. R. Co.* v. *United States* was clear:

> "Furthermore, there would be no occasion for the conditions of Appendix G to be imposed and hear-

ing and decision on this highly controversial matter would not be necessary insofar as the three protected railroads are concerned. Finally, such action would provide the solution to the problem of the necessary and indispensable protection to the three railroads that the Commission found prerequisite to the merger.

"Furthermore, the serious charge that the conditions of Appendix G were imposed without notice and hearing would in large part be dissipated by this course of action." (386 U.S. at 390)

The reimposition of the controversial Appendix G conditions has not only complicated judicial review of *PRR-NYC* and *N&W Inclusion,* but has opened the door to maneuvering by various eastern railroads. B&M, in a reversal of position, now supports prompt consummation of *PRR-NYC,* and CNJ appears to have an understanding with PRR. (Moosic Mandamus, App. G) The chairman of D&H has recently stated that D&H might be part of a New England system or possibly part of a merged *PRR-NYC* system.[12] E-L executives have estimated that inclusion in N&W may be a year or a year and half away.[13] Control of B&M apparently changed on the day following the August 14, 1967 release of the I.C.C.'s report on

[12] "Delaware & Hudson Considers 'Alternative' to Being In in N&W Rail System," *Wall St. Journal,* September 1, 1967. Amoskeag Co. is the largest single holder of D&H stock. Frederic C. Dumaine, Jr., president of Amoskeag, is chairman, president and chief executive officer of Delaware & Hudson Co., which controls the Delaware & Hudson Railroad. Amoskeag Co. increased to 9.44% its holdings in Delaware & Hudson. *Wall St. Journal,* August 30, 1967.

[13] "Erie Meeting Votes to Accept I.C.C.'s Plan", *N.Y. Times,* August 29, 1967.

reconsideration in *N&W Inclusion.*[14] PRR made an offer to acquire Reading.[15]

Hearings at the I.C.C. in Finance Docket No. 23832, the proposed N&W-C&O merger, are nearing completion. Where will the smaller roads really find their homes? The entire railroad unification situation in the east is shrouded in mystery. The reimposition of Appendix G in *PRR-NYC* by the agency, with the resultant judicial review of *PRR-NYC* in a separate proceeding from *N&W Inclusion,* has been a major factor.

If the stay imposed by the Middle District of Pennsylvania is vacated, and judicial review of the public interest issues in both I.C.C. orders allowed to proceed simultaneously, proper judicial dispatch will be afforded.

CONCLUSION

Petitioners pray that a writ of mandamus issue from this Court directed to the Honorable United States District Court for the Middle District of Pennsylvania, and to the Honorable Judges of said Court, requiring the Honorable Francis L. Van Dusen, Michael H. Sheridan and William J. Nealon to show cause on a day to be fixed by this Court why mandamus should not issue from this Court directing the said judges to hear and determine *Borough of Moosic,*

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[14] "Control of Boston & Maine Holding Firm Apparently Shifts; 4 Directors Sell Stock," *Wall St. Journal,* August 16, 1967.

[15] "Reading Road, in Surprising Turn, Holding Merger Talks With Pennsy, Central Lines," *Wall St. Journal,* July 10, 1967; "Pennsy and Central Drop Merger Bid to Reading," *N.Y. Times,* July 12, 1967; "Dissidents Revive '65 Reading Suit—3 Directors Charge Merger Was 'Wrongfully Rejected' ", *N.Y. Times,* August 31, 1967.

et al. v. *United States, et al.*, No. 10054 Civil, pending in the United States District Court for the Middle District of Pennsylvania.

In the alternative, petitioners pray that a writ of certiorari issue to review the orders entered that stay further proceedings in *Borough of Moosic, et al.* v. *United States, et al.*, No. 10054 Civil, pending in the United States District Court for the Middle District of Pennsylvania.

Petitioners pray for such additional relief and process as may be necessary and appropriate in the premises.

Respectfully Submitted,

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